

### Remarks

By the present amendment, the applicant herewith submits a Substitute Declaration in compliance with the Examiner's request therefor. The applicant has also amended the specification at page 2 and submitted a new Abstract as required by the Examiner. The applicant has also cancelled original claims 1 to 5 and introduced new claims 6 to 27. Since there are now two claims in excess of twenty in the application, a check in the amount of \$18 for a small entity is enclosed herewith.

In the Office Action the Examiner rejected original claims 1, 2, 4 and 5 as being anticipated under 35 U.S.C. 102(b) by the U.S. Patent No. 5,658,573, to Holcomb. The Examiner states that Holcomb exemplifies a composition comprising 58.39% water, 0.83% of an aqueous suspension of colloidal silica, 8.44% mineral oil (excipient), 4% glycerine (excipient). The Examiner also rejected claim 3 as being obvious under 35 U.S.C. 103(a) over the Holcomb reference.

The Holcomb reference relates to a method of generating an aqueous suspension of colloidal silica comprising the steps of:

- combining over a period of time a solution of silica in about 3 to about 4 molar NaOH with water to a final concentration of the combination of about 0.05% silica;
- continuously circulating the combination through a magnetic field greater than the earth's magnetic field during the combining step; and
- titrating the combination with an acid to a pH of between about 7.6 and 8.2 while circulating the combination through the magnetic field.

Therefore, the cited patent discloses a method for generating a cosmetic product (aqueous suspension of colloidal silica), which is composed of colloidal silica and water always added to other components, which are described with the relevant percentages thereof in the examples from I to V, and which can be applied on skin to

enhance otherwise ordinary body care compositions, and particularly enhance the penetration of water, oils and collagen into hair shafts, so that the hair coloring material penetrates the hair shafts to provide brighter color and longer penetration of the hair color. The use of the inorganic colloidal silica in facial cleansers, moisturizing creams, and facial mists provide a package for improvement of skin moisture, tone and youthful appearance.


Therefore, it appears evident that this reference discloses a particular and complicated method of generating a cosmetic product whereas in the present invention, no method of generating a cosmetic product is disclosed. Moreover, each product composition of this reference is used for different skin treatments and does not produce and also does not claim a tensor effect to stretch skin and make it smoother. The reason for this is that it uses an insufficient quantity of silica which cannot produce a tensor effect and which serves to facilitate absorption of moisturizing agents into the skin.

On the other hand, the product of the present invention uses a major quantity of silica added to water, which silica is used as a tensor agent and allows the tensor effect on skin and both components, silica and water, of this product are enough to obtain the desired tensor effect and do not require the addition of other components such as the excipients to obtain this effect. The excipients are added only to prepare the product in different forms available on the market. The applicant also objects to the Examiner's conclusion that the product composition disclosed by Holcomb could be slightly modified in the components and percentages thereof to be used for the same purposes by a skilled person so as to obtain a similar product, thereby providing an enhancement formulation for "effectiveness and/or hydrating capacity of body care compositions". On the contrary, the present product composition was not disclosed at the time of filing the Holcomb patent and its purpose of a different and innovative function is totally unrelated to any hydrating formulation like that of Holcomb because the present claimed composition functions as a skin tensor that stretches wrinkles and make skin smooth. This is its

primary function. Thus, it would not have been obvious to create a cosmetic product such as that of the present application, which has a different function and a different composition from Holcomb.

In view of the above, it is respectfully submitted that claims 6 to 27 are not anticipated by nor rendered obvious by the cited Holcomb reference and should therefore be allowed so that the case may be passed to issue. Such action is respectfully solicited.

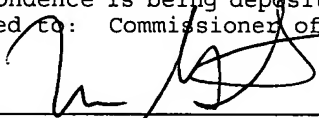
Respectfully submitted,  
FREDERICO GRANZOTTO (BA 22808)

  
\_\_\_\_\_  
Joseph J. Orlando, Reg. No. 25,218  
Fernanda M. Fiordalisi, Reg. No. 20,938  
Allison C. Collard; Reg. No. 22,532  
(Customer No. 178)  
Attorneys for Applicants

BUCKNAM & ARCHER  
1077 Northern Boulevard  
Roslyn, New York 11576  
(516) 365-9802

ENCL.      Abstract of the Disclosure  
             Copy of Petition for Extension of Time  
             Check in the amount of \$18.00

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. BOX 1450, Alexandria, Va 22313-1450 on January 22, 2004.

  
\_\_\_\_\_  
Maria Guastella